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No. 03-287

In The Supreme Court Of The United States

REGINALD WILKINSON, Director, et al.,
Petitioners,

v.

WILLIAM DWIGHT DOTSON, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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Pursuant to the Court's Rule 15.8, the Attorney General of Ohio submits this Supplemental Brief for the Petitioners. We do so because we believe that the Petition was likely held for the decision in *Muhammad v. Close,* No. 02-9065 (February 25, 2004). This Brief discusses the effect of that decision—or, more precisely, the lack of such an effect—on the question presented here. As explained below, yesterday's *Muhammad* decision did not offer, even indirectly, any further guidance on our question presented. Thus, we respectfully suggest that the need for review in this case remains strong, and that it would serve no purpose to remand this case for reconsideration in light of *Muhammad.*

1. The question presented here is whether prisoners may use 42 U.S.C. § 1983 to challenge the procedures used in parole hearings, where success on the claim would not *automatically* result in the prisoner's earlier release, but would entitle the prisoner to a new hearing, at which he *might achieve* such earlier release. *See generally* Petition. Ohio urges that such claims are blocked by the "favorable termination requirement" of *Heck v. Humphrey*, 512 U.S. 477 (1994), which bars a prisoners from filing a claim under Section 1983 if success on the claim would "necessarily imply the invalidity of his conviction or sentence . . . unless . . . the conviction or sentence has already been invalidated." *Id.* at 487. As the Petition and Reply detailed, the Circuits are deeply split on the application of *Heck* to parole-related claims, *see* Pet. at 9-15; Reply at 8-10, and many States, understandably, wish to see the question answered. *See* Brief amicus curiae of State of Alabama, et al.

2. In *Muhammad*, the Court addressed the application—or, as it turned out, the non-application—of the *Heck* bar to a claim that challenged a prison disciplinary proceeding, but that proceeding had affected only the conditions of the prisoner's confinement, not the duration of his sentence. *Muhammad,* slip op. at 5. In *Muhammad,* the prisoner

(Petitioner Muhammad) was placed in "special detention," or segregation within the prison, and he was deprived of privileges. *Id.* But "no good-time credits were eliminated" by the challenged proceeding, so nothing about that proceeding could have affected Muhammad's duration of sentence. His Section 1983 claim, which attacked that proceeding, "could not therefore be construed as seeking a judgment at odds with his conviction or with the State's calculation of time to be served in accordance with the underlying sentence." *Id.* at 6. Thus, *Muhammad* did not address *Heck's* application to claims in which prisoners attack parole proceedings, as parole proceedings do of course affect "the State's calculation of time to be served."

3. While *Muhammad* was pending, it was possible that the case might offer guidance for cases involving parole or good-time credits, as the Respondent there had argued to the Court that "Muhammad would be entitled to restoration of some good-time credits," thus affecting the duration of his sentence. *Id.* But the Court did not address this "eleventh-hour contention," as it was waived in the lower courts and was first raised in this Court. *Id.* Ohio suggests that this once-potential good-time issue, had it survived, supplied the stronger link between *Muhammad* and this case, as opposed to any more abstract linkage between the (non)application of the *Heck* bar to conditions-of-confinement cases (such as *Muhammad*) and the application of *Heck* to parole cases.

4. In light of the above, Ohio respectfully suggests not only that the need for review remains strong in our case (for the reasons in the Petition and Reply), but also that such review should be plenary review in this Court. That is, Ohio suggests that it would serve little or no purpose for the Court to grant the Petition, vacate the judgment below, and remand to the Sixth Circuit for reconsideration in light of *Muhammad*. The *Muhammad* decision, by distinguishing between challenges to conditions-of-confinement, and

challenges concerning duration-of-sentence, offers no new guidance on the issues that divided the Sixth Circuit in its *en banc* decision, and offers no new guidance to the other Circuits that share our Circuit's side of the Circuit split.

To be sure, yesterday's *Muhammad* decision does restate principles that the Court explained in *Heck* and in *Edwards v. Balisok*, 520 U.S. 641 (1997). In our view, the Court's plain restatement of those principles in *Muhammad* merely confirms the need for this Court to correct the Sixth Circuit's misreading of *Balisok*. For example, the Sixth Circuit reasoned here that the *Heck* bar did not apply because, in its view, *Heck* simply does not protect a "decision of the Ohio Parole Board," or of any administrative body, from invalidation. Pet. App. 35a n.2. The court instead limited *Heck's* protection "to the decision of a convicting court." *Id.* By contrast, *Muhammad* reminds us that *Balisok* applied the *Heck* bar to a claim that alleged a "procedural defect in a prison's *administrative process*." *Id.* at 2 (emphasis added). *Muhammad* also described the *Heck* bar as applying to claims challenging "the State's calculation of time to be served in accordance with the underlying sentence," *id.* at 6, and of course, such "calculations" are almost universally done administratively, long after initial sentencing by the convicting court.

Similarly, *Muhammad* also reflects *Heck's* and *Balisok's* application to cases where the prisoner's duration-of-sentence *could* be affected, even though the effect is still uncertain. *See id.* at 2 (*Heck* is not "implicated by a prisoner's challenge that *threatens* no consequence for . . . the duration of his sentence.) (emphasis added). This contrasts with the Sixth Circuit's mistaken view that *Heck* does not apply as long as the prisoner will not *automatically obtain earlier release* as a result of winning his Section 1983 suit, even if the prisoner would gain a new hearing that *might* shorten his sentence. *See* Pet. App. 17a (1983 claim "will

only 'necessarily imply' the invalidity of [a] conviction or sentence if it will inevitably or automatically result in earlier release.").

Nevertheless, even though *Muhammad* restates principles that demonstrate the error of the Sixth Circuit's reasoning, Ohio suggests that remand is not warranted for the simple reason that none of these principles were newly announced or extended in *Muhammad*, as all were plainly established by *Balisok*, if not already by *Heck*. Nor is this a case in which the court below committed a minor error in application of law to facts, or in characterization of facts, so that remand would allow a quick correction. This was a published *en banc* decision, and the court split 6-4 over the meaning of *Balisok* and the legal tests to apply, and nothing in *Muhammad* sheds further light on the issues that divided the court below (and that also divide the Circuits).

* * *

For the above reasons, the need for review remains strong after *Muhammad*, so the Petition should be granted.

Respectfully submitted,

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